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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA)	STATEMENT IN SUPPORT OF:
CORPORATIONS COMMISSIONER,)	
)	(1) ORDERS LEVYING ADMINISTRATIVE
Complainant,)	PENALTIES PURSUANT TO
v.)	CORPORATIONS CODE SECTION
)	25252;
FIDUCIARY INVESTMENTS, INC.;)	
RICHARD ALBERT COX, individually and)	(2) CLAIM FOR ANCILLARY RELIEF
doing business as RICHARD COX FIDUCIARY)	PURSUANT TO CORPORATIONS
SERVICES; and, BARBARA BAILEY COX,)	CODE SECTION 25254; and,
)	(3) DESIST AND REFRAIN ORDERS
Respondents.)	
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Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the Department of Corporations ("Department"), collectively ("Complainant"), alleges and charges as follows:

I. STATEMENT OF FACTS

1. During the period of approximately January 1992 through June 1996, Richard Albert Cox ("Richard Cox") was licensed as a general securities agent by the National Association of Securities Dealers ("NASD") (CRD No. 2201392).

1 2. On June 10, 1994, Richard Cox first became registered as a California investment adviser
2 under section 25230 of the California Corporate Securities Law of 1968 (California Corporations
3 Code section 25000 *et seq.*) (“CSL”).¹
4

5 3. On June 24, 2009, the Commissioner summarily revoked Richard Cox’s investment adviser
6 registration pursuant to Corporations Code section 25242(c)(1) for failure to pay annual renewal fees
7 as required by Corporations Code section 25608(q)(1).

8 4. Since as early as 1998, Richard Cox has conducted business as a professional fiduciary and
9 became licensed by the California Department of Consumer Affairs Professional Fiduciaries Bureau
10 on August 4, 2008 (license #137) pursuant to the Professional Fiduciaries Act (California Business
11 and Professions Code section 6500 *et seq.*). In January 2011, Richard Cox reported to the
12 Professional Fiduciaries Bureau that he had \$15 million of client assets under his fiduciary
13 management.
14

15 5. Beginning in or about 2004 through the present time, Richard Cox has operated as a
16 professional fiduciary under the fictitious business name of Richard Cox Fiduciary Services
17 (“RCFS”).
18

19 6. On September 1, 2010, Richard Cox’s wife, Barbara Bailey Cox (“Barbara Cox”), also
20 obtained a professional fiduciary license through the California Department of Consumer Affairs
21 Professional Fiduciaries Bureau (license #459).

22 7. On or about August 1, 2001, Richard and Barbara Cox formed and managed Fiduciary
23 Investments, Inc. (“Fiduciary Investments”).
24

25 8. Fiduciary Investments remains an active California corporation with a mailing address of Post
26 Office Box 1499, Graegle, California, 96103 and designated principal office address of 805 “C”
27 Road, Blairsden, California, 96103.
28

¹ Hereafter all code references are to the California Corporations Code unless otherwise specified.

1 9. At all relevant times, Richard and Barbara Cox were the only officers, directors and control
2 persons of Fiduciary Investments.

3 10. The purported purpose of forming Fiduciary Investments was to pool client trust funds to
4 invest in California real estate and residential rental properties that would generate “steady income”
5 for shareholders. Additionally, some funds were invested in third party promissory notes.
6

7 11. “Respondents” shall herein collectively mean and refer to Fiduciary Investments, Richard
8 Cox, individually and doing business as RCFS, and Barbara Cox. Whenever reference is made in
9 this Statement in Support to “Respondents” doing any act, the allegation shall mean the act of each
10 respondent acting individually, jointly and severally.
11

12 12. During the period of October 2001 through March 2009, Respondents offered and sold
13 securities totaling approximately \$490,000.00 in the form of shares of stock in Fiduciary Investments
14 to at least 21 investors cherry-picked from the pool of trust beneficiaries whose financial affairs were
15 placed under the fiduciary management of Richard Cox.
16

17 13. Richard Cox utilized his authority as a professional fiduciary to directly withdraw and transfer
18 funds from and between the trust accounts of his many clients, who were often mentally or physically
19 disabled and financially unsophisticated individuals, in order to effect the purchase and transfer of
20 securities in Fiduciary Investments as required for Respondents’ personal benefit.
21

22 14. At no time before or during the offer and sale of the Fiduciary Investment stock were
23 investors provided an offering circular or company prospectus nor did Respondents engage a certified
24 public accountant to perform an independent audit of the books and records or financial statements of
25 Fiduciary Investments.

26 15. In probate proceedings that took place before the San Francisco Superior Court during the
27 period of July 2003 through January 2005, a court-appointed guardian ad litem raised concerns about
28

1 issues of self-dealing, conflicts of interest, and the fairness of stock-valuation methods inherent in
2 Richard Cox's practice of investing client trust funds in his own company, Fiduciary Investments.

3 16. As a result of the San Francisco probate court proceedings, the court ordered the divestiture
4 of the shares of stock in Fiduciary Investments held by the three trusts at issue. Respondents
5 complied by liquidating the stock of the subject accounts and reissuing some of these same shares to
6 other trust clients.
7

8 17. In or about December 2006, Richard and Barbara Cox created a fictitious business entity
9 called Turdel & Fundt to serve, inter alia, as an alter ego for facilitating the purchase and transfer of
10 shares of stock in Fiduciary Investments among and between themselves and trust beneficiaries.
11

12 18. During the period beginning as early as July 2005 through March 2009, Respondents operated
13 a Ponzi scheme by taking advantage of their checkbook control over trust client assets to purchase
14 new or additional shares in Fiduciary Investment on behalf of new or existing investors in order to
15 pay back principal and issue dividends to earlier investors.
16

17 19. Beginning as early as January 2007, Richard Cox engaged in the business of directly
18 brokering the sale of stock, mutual funds or other securities among and between several of his trust
19 clients.
20

21 20. By August 2007, Fiduciary Investments was unable to pay dividends and claimed to be
22 undergoing liquidation. In the "annual report" prepared for the fiscal year ending August 23, 2007,
23 Respondents reported that the assets of Fiduciary Investments were valued at \$149,407.40 and
24 consisted of cash reserves and one parcel of real property located at 418 Utah Street in Portola,
25 California.
26

27 21. Although tax statements that Respondents filed for Fiduciary Investments for 2008 showed
28 that the company and all of its shareholders sustained net losses, Respondents continued to sell stock

1 in Fiduciary Investments to new trust client investors through March 2009 without disclosing these
2 losses.

3 22. In early March 2009, “L.P.”, the sister of one of Richard Cox’s trust clients, contacted him to
4 express concern over the propriety of family trust funds being invested in Fiduciary Investments, a
5 company owned and operated by the trustee.
6

7 23. As of March 5, 2009, Fiduciary Investments had company assets consisting of cash reserves
8 of \$348.00 and the sole parcel of real property located at 418 Utah Street in Portola, California.

9 24. On or about March 9, 2009, Respondents sold 3,450 shares of stock in Fiduciary Investments
10 for the sum of \$195,896.00 to two new trust investors, the “R. Trust” and “S.J.G. Special Needs
11 Trust,” even though the company’s assets were valued well below that amount on the date of sale.
12

13 25. On or about March 12, 2009, Richard Cox replied to “L.P.” regarding the family’s trust
14 investment, writing: “As the real estate market has declined, we have been liquidating the
15 investments and will be sold out by the end of this month. The liquidation will be paid in cash.”
16

17 26. Within six days of the large March 9, 2009 stock purchase by the two new trust investors,
18 Respondents cashed out the interests of the nine remaining Fiduciary Investment shareholders in the
19 amount of \$118,864.35.² And, on March 26, 2009, the bulk of the balance of the new investor
20 money was used by Respondents to pay off a \$46,347.57 note held by a private lender.³
21

22 27. Other than the single shares each held by Richard and Barbara Cox, the two newest investors,
23 “R. Trust” and “S.J.G. Special Needs Trust,” have collectively held 99% of the stock of Fiduciary
24 Investments since March 13, 2009.
25

26
27 ² This sum includes cash disbursement to Respondents’ alter ego Turdel & Fundt for 145 shares of stock internally
28 valued at \$8,469.45.

³ Respondent’s pay-off to the private lender included a “reconveyance fee” for an unspecified property.

1 28. Less than six months after the March 2009 stock purchase, tax statements that Respondents
2 issued for the "R. Trust" and "S.J.G. Special Needs Trust" for the fiscal year ending August 23, 2009
3 reported net losses in Fiduciary Investments for each in the amount of \$5,855.81.

4 29. The assets of Fiduciary Investments are currently valued at approximately \$100,000.00.⁴
5
6 However, in or about June 2011, Respondents issued written statements to both of the majority
7 shareholders, the "R. Trust" and "S.J.G. Special Needs Trust," indicating that their respective 1,725
8 shares in Fiduciary Investments were each valued at \$100,757.25 as of December 31, 2010.

9 30. Despite the sharp decline in the value of the company's real property and the reduction or
10 complete lack of rental income, Respondents continued to pay steady dividends to Fiduciary
11 Investment's two remaining trust client shareholders from the diminishing balance of investor funds,
12 a tactic typically employed to provide a false sense of security to investors and evade detection of a
13 Ponzi scheme.
14

15 **II. VIOLATIONS OF CORPORATIONS CODE SECTION 25110**

16 **UNQUALIFIED, NON-EXEMPT OFFER AND SALE OF SECURITIES**

17 **(AGAINST ALL RESPONDENTS)**

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19 31. Complainant re-alleges and reincorporates by reference paragraphs 1-30 of this Statement in
20 Support as though fully set forth herein.

21 32. Corporations Code section 25110 prohibits the offer or sale of unqualified, non-exempt
22 securities in issuer transactions in the State of California.

23 33. The securities, in the form of shares of stock in Fiduciary Investments, which were offered
24
25

26
27 ⁴ The Commissioner's investigation disclosed that an appraisal Respondents obtained in September 2010 for the sole real
28 asset of the company, the parcel located at 418 Utah Street, estimated the property value at \$119,500. Plumas County
tax records for this same property presently reflect an assessed value of \$93,708; and, bank records subpoenaed by the
Commissioner show the company had cash reserves of only \$7,792.41 as of April 13, 2011.

1 and sold by Respondents are subject to qualification under the CSL. These securities were offered
2 or sold in this state in issuer transactions. The Department of Corporations has not issued a permit
3 or other form of qualification authorizing any person to offer or sell these securities in this state.
4
5 The offer or sale of these securities is not exempt.

6 **III. VIOLATIONS OF CORPORATIONS CODE SECTION 25401**

7 **MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACT**

8 **(AGAINST ALL RESPONDENTS)**

9 34. Complainant re-alleges and reincorporates by reference paragraphs 1-33 of this Statement in
10 Support as though fully set forth herein.

11
12 35. Corporations Code section 25401 prohibits the offer and/or sale of securities in this state by
13 means of written or oral communications that include untrue statements of material fact or omits
14 material facts necessary in order to make the statements made, in the light of the circumstances
15 under which they were made, not misleading.

16
17 36. In connection with the offer and sale of the securities offered in Fiduciary Investments,
18 including shares of stock, Respondents made, or caused to be made, misrepresentations of material
19 fact or omitted to state material facts including, but not limited to, the following:

20 a. Failing to disclose that the securities were subject to qualification in the State of
21 California;

22
23 b. Not informing investors that the sale price or "market value" of their shares of stock
24 in Fiduciary Investments would be determined solely by Respondents' internal valuation methods;

25 c. Withholding information from new investors that, as early as August 2007, Fiduciary
26 Investments was undercapitalized and only able to pay back principal and dividends, if any, to earlier
27 investors by taking in money from new investors in furtherance of a Ponzi scheme;
28

1 d. Failing to disclose to investors that investing trust funds with a company in which the
2 trustee has a personal business interest poses a conflict of interest in violation of section 4476 of title
3 16 of the California Code of Regulations;

4 e. Failing to disclose that investment funds would be used to pay for services rendered to
5 Fiduciary Investments by agents, affiliates or businesses owned fully or in part by Richard Cox
6 and/or his wife, Barbara Cox; and,

7 f. Falsely representing that real property assets of Fiduciary Investments were owned
8 outright as a result of cash purchases and that the company had “no debt” when, in fact, title on one
9 or more of the properties was encumbered by interests held by private promissory notes.
10

11 **IV. VIOLATIONS OF CORPORATIONS CODE SECTIONS 25241 AND 25404(b) AND**

12 **CALIFORNIA CODE OF REGULATIONS, TITLE 10, SECTION 260.241.3**

13 **FAILURE TO MAINTAIN BOOKS AND RECORDS AND SUBMIT TO**
14 **EXAMINATION; MAKING UNTRUE STATEMENTS TO THE COMMISSIONER**
15 **(AGAINST RESPONDENT RICHARD COX)**
16

17 37. Complainant re-alleges and reincorporates by reference paragraphs 1-36 of this Statement in
18 Support as though fully set forth herein.
19

20 38. The CSL and the California Code of Regulations, title 10, section 260.000 *et seq.* contain
21 provisions that govern persons licensed to operate in the securities industry. To ensure the
22 protection of the public, the Commissioner requires compliance by licensees with these laws and
23 regulations. Licensees are required to keep accurate books and records, to amend their respective
24 applications by providing current information to the facts stated therein, and to pay fees.
25

26 39. Corporations Code section 25241 requires that investment advisers licensed under
27 Corporations Code section 25230 maintain books and records that are subject to examination by the
28 Commissioner and provides, in relevant part, as follows:

- 1 (a) Every...investment adviser licensed under Section 25230 shall make and keep such
- 2 accounts, correspondence, memoranda, papers, books, and other records and shall file such
- 3 financial and other reports as the commissioner by rule requires, subject to the limitations
- 4 of...Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers.
- 5 (b) All records so required shall be preserved for the time specified in the rule.
- 6 (c) All records referred to in this section are subject at any time and from time to time to such
- 7 reasonable periodic, special, or other examinations by the commissioner, within or without
- 8 this state, as the commissioner deems necessary or appropriate in the public interest or for the
- 9 protection of investors....
- 10 40. California Code of Regulations, title 10, section 260.241.3 sets forth the specific books and
- 11 records that are required to be maintained by investment advisers and provides, in relevant part, as
- 12 follows:
- 13 (a) Every licensed investment adviser shall make and keep true, accurate and current the
- 14 following books and records relating to such person's investment advisory business:
- 15 ... (7) Originals of all written communications received and copies of all written
- 16 communications sent by such investment adviser relating to (i) any recommendation made or
- 17 proposed to be made and any advice given or proposed to be given, (ii) any receipt,
- 18 disbursement or delivery of funds or securities, or (iii) the placing or execution of any order
- 19 to purchase or sell any security;...
- 20 (8) A list or other record of all accounts in which the investment adviser is vested with any
- 21 power of attorney with respect to the funds, securities or transactions of any client.
- 22 (9) All powers of attorney and other evidences of the granting of any discretionary authority
- 23 by any client to the investment adviser, or copies thereof.
- 24 (10) All written agreements (or copies thereof) entered into by the investment adviser with
- 25 any client or otherwise relating to the business of such investment adviser as such.
- 26 ... (12) A record of every transaction in a security in which the investment adviser...has, or
- 27 by reason of such transaction acquires, any direct or indirect beneficial ownership...Such
- 28 record shall state the title and amount of the security involved; the date and nature of the
- transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was
- effected; and the name of the broker-dealer or bank with or through whom the transaction
- was effected. A transaction shall be recorded not later than 10 days after the end of the
- calendar quarter in which the transaction was effected.

1 41. In or about May 2000, the Department notified Richard Cox that it would be conducting a
2 regulatory examination of his investment adviser business pursuant to the books and records
3 provisions of the CSL, and the regulations promulgated thereunder.

4
5 42. On June 20, 2000, Richard Cox sent a letter to the Department stating: "I interpret the rules
6 set by you for giving investment advice as a professional to the trusts I manage, (investing in stocks,
7 bonds, mutual funds, etc.) [r]equires me to be a RIA [registered investment adviser] by the State of
8 California...The answer is either; (1) I am over registered and over concerned trying to follow the
9 rules, or (2) the rest of the people in this business need to step up and be registered."

10
11 43. On June 27, 2000, the Department sent a letter to Richard Cox, replying: "In regards to your
12 letter of June 20, 2000, please be advised that nothing in your registration as a professional fiduciary
13 excludes or exempts you from licensing requirements for an investment adviser under the California
14 Corporate Securities Law of 1968."

15
16 44. In a letter to the Department dated July 1, 2000 stating that he would not "voluntarily"
17 produce his "confidential" tax or trust files to the Commissioner's examiner, Richard Cox wrote:
18 "As a Registered Investment Adviser I have no clients and no files. There is no question that you can
19 have access to any information about this part of my business and I would willingly make them
20 available to you if there were any."⁵

21
22 45. As Richard Cox continued to maintain his investment adviser registration, the Department
23 conducted a regulatory examination on September 11, 2003. On this occasion, Richard Cox informed
24 the Department that his investment advisory business was "inactive" and that he had only received
25 fees for two transactions with two "clients" during the past five years. As part of the examination,
26

27
28 ⁵ Despite his claims of willingness to cooperate, Richard Cox repeatedly refused to produce non-privileged documents in conjunction with the Department's 2000 and 2003 examinations of his business activities; and, in 2011, he resisted full compliance with subpoenas duces tecum issued under the authority of Corporations Code section 25531 and Government Code sections 11180-11182.

Richard Cox provided copies of undated “service agreements” entered into with the two clients he disclosed, wherein it was stated that “Investment Management Services” would be assessed a fee of “½ of 1% of market value of assets.”

46. Contrary to Richard Cox’s representation to the Department that his investment advisory business has been “inactive” since 2002, the Commissioner discovered that, beginning as early as January 2000 through the present time, Richard Cox has annually charged a similar “investment management” fee to his trust clients ranging between ½ to ¾ of 1% of the market value of assets under his control. He has also advertised that he can provide clients “assistance in security registration.”

47. Moreover, during the same period that Richard Cox denied the existence of “active” advisory client accounts and refused the Commissioner’s examiners access to his trust clients’ records, he advertised in the promotional brochure for RCFS that he was “registered with the State of California as Registered Investment Advisor,” thereby falsely representing to prospective clients that his management of their trust funds would enjoy the added protection of regulatory oversight.

48. In marketing his professional services to a prospective trust client in a letter dated October 16, 2008, Richard Cox cited his financial expertise as a basis for charging higher fees, stating:

...[W]e could save thousands of dollars in time to keep the trust current, and not take much time handing the trust to me as a new trustee...Because of my experience in investments, accountings and trust administration, I should be able to process the work more rapidly, but with the same care, as other professional fiduciaries...As you can see my fee charges are higher than those charged by some other fiduciaries. In reviewing the trust assets it would be my plan to charge the standard fee of ¾ of one percent for the investment management of the liquid assets (the brokerage account, cash and the partnership investments) plus the ¾ of one percent for the responsibility of being trustee.

49. Corporations Code section 25404, subdivision (b), provides:

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

1 50. Based on the foregoing, the Commissioner finds that Richard Cox knowingly made untrue
2 statements to the Commissioner during the course of the Department's 2000 and 2003 examinations,
3 by obfuscating the full extent of his investment adviser activities and refusing to produce all required
4 books and records for inspection, with intent to perpetuate his control and appropriation of client
5 funds and impede the Commissioner's discovery of conduct in violation of the CSL.

7 51. Had Richard Cox lawfully complied with the provisions of the CSL and disclosed to the
8 Commissioner that he was providing "investment management" services to his trust clients,
9 particularly under the auspices of his California investment adviser license, he would have been
10 subject to audit for full compliance with subdivision (a) of section 260.241.3.

12 52. Based on the foregoing, the Commissioner finds that during the period of his registration as
13 an investment adviser, from at least May 2000 through June 2009, Richard Cox failed to maintain
14 necessary books and records and submit to examination in violation of sections 25241 and 260.241.3.

16 53. The Commissioner further finds that Richard Cox knowingly made untrue statements to the
17 Commissioner during the course of the 2000 and 2003 examinations with the intent to impede or
18 obstruct enforcement of the provisions of the CSL in violation of section 25404(b).

19 **V. VIOLATIONS OF CORPORATIONS CODE SECTION 25235**
20 **FRAUDULENT, DECEPTIVE OR MANIPULATIVE ACTS**
21 **(AGAINST RESPONDENT RICHARD COX)**

22 54. Complainant re-alleges and reincorporates by reference paragraphs 1-53 of this Statement in
23 Support as though fully set forth herein.

25 55. Corporations Code section 25235 provides that it is unlawful for any investment adviser in
26 this state to, directly or indirectly, engage in any act, practice, or course of business which is
27 fraudulent, deceptive or manipulative.

28 56. California Code of Regulations section 260.237 further provides, in relevant part:

1 It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business,
2 within the meaning of Section 25235 of the Code, for any investment adviser who has
3 custody or possession of any funds or securities...in which any client has any beneficial
4 interest to do any act or take any action, directly or indirectly, with respect to any such funds
5 or securities, unless:

6 (d) the investment adviser sends to each client, not less frequently than once every three
7 months, an itemized statement showing the funds and securities in the custody or possession
8 of the investment adviser at the end of the period, and all debits, credits and transactions in
9 the client's account during the period; and

10 (e) all funds and securities of clients are verified by actual examination at least once during
11 each calendar year by an independent certified public accountant or public accountant at a
12 time which shall be chosen by the accountant without prior notice to the investment adviser.
13 A certificate of the accountant stating that such person has made an examination of the funds
14 and securities, and describing the nature and extent of the examination, shall be filed with the
15 Commissioner promptly after each examination.

16 57. The Commissioner finds that Richard Cox provided discretionary investment advice to
17 California investors and received compensation for these investment advisory services under the
18 pretenses of an "Investment Management Fee" and hourly compensation for "other services" during
19 the period he was licensed as an investment adviser and subject to the bookkeeping, reporting, and
20 examination requirements of the CSL, as set forth above.

21 58. The investigation conducted by the Commissioner also reveals that beginning as early as
22 January 2004 through June 2009, when he was a licensed California investment adviser, Richard
23 Cox had custody and possession of clients' funds and securities but neither provided investors with
24 quarterly itemized statements, as required by subdivision (d) of section 260.237, nor conducted
25 annual examinations of clients' funds and securities by a public accountant, in compliance with
26 subdivision (e) of section 260.237.

27 59. Based on the foregoing, the Commissioner finds that during the period that Richard Cox was
28 subject to the investment adviser licensing requirements of the CSL, he committed fraudulent,
deceptive, or manipulative acts within the meaning of section 260.237, in violation of section 25235.

VII. VIOLATION OF CORPORATIONS CODE SECTION 25210

UNLICENSED BROKER-DEALER ACTIVITY

(AGAINST RESPONDENT RICHARD COX)

60. Complainant re-alleges and reincorporates by reference paragraphs 1-59 of this Statement in Support as though fully set forth herein.

61. Corporations Code section 25004 defines a “broker-dealer” as “any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account.”

62. Corporations Code section 25210 provides in relevant part:

(a) Unless exempted under the provisions of Chapter 1(commencing with Section 25200) of this part, no broker-dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer has first applied for and secured from the commissioner a certificate, then in effect, authorizing that person to act in that capacity.

63. The Commissioner’s investigation of Richard Cox’s business activities reveals that, beginning as early as January 2007, he engaged in the business of effecting transactions in securities in this state, working alone or in concert or participation with others, for the account of others or for his own account.

64. On June 30, 2010, Richard Cox sent letters to his trust clients, informing:

On May 2nd I decided that all of these uncertainties [in the economy] made stock investing risky, and as I have done in the past, I sold off most of the stock positions in the accounts...Protection of the principal is of primary concern for the accounts so we looked at the risks, and decided to invest in US Treasury obligations indexed for inflation, and gold stocks which hold gold and mining shares.

65. The Commissioner has not issued a certificate authorizing Richard Cox to act as a broker-dealer, nor is he exempt from the broker-dealer certification requirement under section 25210 of the CSL.

1 66. Accordingly, the Commissioner is of the opinion that Richard Cox effected transactions in
2 securities as a broker-dealer without having first applied for and secured from the Commissioner a
3 certificate, then in effect, authorizing him to act in that capacity, in violation of section 25210 of the
4 CSL.
5

6 **VIII. VIOLATION OF CORPORATIONS CODE SECTION 25230**

7 **UNLICENSED INVESTMENT ADVISER ACTIVITY**

8 **(AGAINST RESPONDENT RICHARD COX)**

9 67. Complainant re-alleges and reincorporates by reference paragraphs 1-66 of this Statement in
10 Support as though fully set forth herein.
11

12 68. On February 2, 2009, the Commissioner advised Richard Cox in writing that his investment
13 adviser certificate would be summarily revoked unless he paid the annual renewal fees or
14 satisfactorily surrendered the certificate by filing a form ADV-W.

15 69. On June 24, 2009, the Commissioner summarily revoked Richard Cox's investment adviser
16 registration pursuant to Corporations Code section 25242(c)(1) for failure to pay annual renewal fees
17 as required by Corporations Code section 25608(q)(1).

18 70. The Commissioner's June 24, 2009 letter to Richard Cox advised:

19 **This order revokes your authority to conduct any investment advisory services in this**
20 **state.** These services include, but are not limited to, investment supervisory services,
21 portfolio management, financial planning, timing services and the issuance of periodicals or
22 reports concerning securities. If you are presently conducting any investment advisory
23 services you must immediately cease such activities.

24 **Please be advised that this revocation order will be entered into your Central**
25 **Registration Depository ("CRD") and Investment Adviser Registration Depository**
26 **("IARD") records. The revocation will result in a disciplinary action against the**
27 **company that must be disclosed on Form ADV and Form U-4.** [Emphasis in original.]
28

71. Although Richard Cox was advised in writing that the revocation of his investment adviser
license would result in a "disciplinary action" requiring mandatory disclosure, he failed to report the

1 revocation to the Professional Fiduciaries Bureau in violation of section 4542 of the California
2 Business and Professions Code.

3 72. The Commissioner's investigation has disclosed that, in addition to the minimum annual
4 trustee fee that Richard Cox currently charges his trust clients, the most recent fee schedule published
5 for RCFS⁶ sets forth an "Investment Management" fee that is separately assessed based on "¾ of 1%
6 per year of market value" of the trust's liquid assets. Additionally, each trust client is subject to
7 billing at an hourly rate of \$185.00 for "other services" provided by Richard Cox.

8 73. Although Richard Cox purportedly ceased citing his credentials as a registered investment
9 adviser beginning as early as March 2010, the current marketing materials for RCFS continue to
10 advertise that he can provide clients "assistance in security registration" and "investment
11 management" services at the rate of ¾ of 1% per year of market value of the trust.

12 74. The Commissioner is of the opinion that even after his California investment adviser
13 registration was revoked on June 24, 2009, Richard Cox continued to provide discretionary
14 investment advice to California investors and receive compensation for these investment advisory
15 services under the pretenses of an "investment management" fee and hourly compensation for "other
16 services" billed through RCFS, in violation of section 25230 of the CSL.

17 75. As was originally expressed in the Department's June 27, 2000 letter to Richard Cox, the
18 Commissioner finds that at no time has Richard Cox been exempt from the investment adviser
19 certification requirement in section 25230 of the CSL.

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24 **IV. ORDER LEVYING ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF**
25 **CORPORATIONS CODE SECTIONS 25110 AND 25401**
26 **(AGAINST RESPONDENTS FIDUCIARY INVESTMENTS AND BARBARA COX)**
27
28

⁶ The RCFS brochure provided to the Commissioner by Respondents purports to have been updated on March 10, 2010.

76. Complainant re-alleges and reincorporates by reference paragraphs 1-75 of this Statement in Support as though fully set forth herein.

77. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any person for willful violations of any provision of the CSL and any rules promulgated thereunder. Specifically, Corporations Code section 25252, subdivision (a), provides in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

(a) Any person subject to this division, other than a broker-dealer or investment adviser, who willfully violates any provision of this division, or who willfully violates any rule or order adopted or issued pursuant to this division, is liable for administrative penalties of not more than one thousand dollars (\$1,000) for the first violation, and not more than two thousand five hundred dollars (\$2,500) for each subsequent violation.

78. Based on the foregoing findings of fact, the Commissioner finds that Respondents Fiduciary Investments, Inc. and Barbara Bailey Cox willfully violated Corporations Code section 25110 by offering and selling unqualified, non-exempt securities in the form of shares of stock in issuer transactions in this state to at least twenty-one (21) investors in this state and elsewhere, including:

- i. M.B. Special Needs Trust
- ii. K.B. Special Needs Trust
- iii. B. Special Needs Trust
- iv. A.H. Special Needs Trust
- v. R.P. Special Needs Trust
- vi. T.S.R. Trust
- vii. S.B. Trust
- viii. A. Trust

- ix. H.B.A. Trust
- x. S.B. Special Needs Trust
- xi. A.J. Special Needs Trust
- xii. G.K. Trust
- xiii. M. Special Needs Trust
- xiv. F. Trust
- xv. L. Trust
- xvi. J.R. Trust
- xvii. E.N. Special Needs Trust
- xviii. M. Trust
- xix. C.D. Trust
- xx. R. Trust
- xxi. S.J.G. Special Needs Trust

79. Based on the foregoing findings of fact, the Commissioner further finds that Respondents Fiduciary Investments, Inc. and Barbara Bailey Cox violated Corporations Code section 25401 by offering and selling securities in the form of shares of stock, by means of any written or oral communication which contained misstatements and/or omitted to state material facts, to at least twenty-one (21) investors in this state and elsewhere, as set forth in paragraph 78 above.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, subdivision (a), the Commissioner prays for an order levying administrative penalties as follows:

- a. Administrative penalties against Respondents Fiduciary Investments, Inc. and Barbara Bailey Cox, individually, jointly and severally, of one thousand dollars (\$1,000) for the first violation of Corporations Code section 25110 and two thousand five hundred dollars (\$2,500)

1 for each the subsequent twenty (20) violations of section 25110, as set forth in paragraph 78 above,
2 for a total amount of fifty-one thousand dollars (\$51,000.00); and,

3 b. Administrative penalties against Respondents Fiduciary Investments, Inc. and
4 Barbara Bailey Cox, individually, jointly and severally, of two thousand five hundred dollars
5 (\$2,500) for each of their twenty-one (21) violations of Corporations Code section 25401, as set
6 forth in paragraphs 78 above, for a total amount of fifty-two thousand five hundred dollars
7 (\$52,500).
8

9 The total amount of administrative penalties levied pursuant to subdivision (a) of
10 Corporations Code section 25252 against Respondents Fiduciary Investments, Inc. and Barbara
11 Bailey Cox, individually, jointly and severally, is one hundred and three thousand five hundred
12 dollars (\$103,500), or according to proof.
13

14 **IX. ORDER LEVYING ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF**
15 **CORPORATIONS CODE SECTIONS 25110, 25401, 25241, 25404(b), 25235, 25210 AND**
16 **25230 AND CALIFORNIA CODE OF REGULATIONS, TITLE 10, SECTION 260.241.3**
17

18 **(AGAINST RESPONDENT RICHARD COX)**

19 80. Complainant re-alleges and reincorporates by reference paragraphs 1-79 of this Statement in
20 Support as though fully set forth herein.

21 81. The foregoing willful conduct described above serves as a basis for an order levying
22 administrative penalties against Respondent Richard Cox, individually and doing business as RCFS.
23

24 82. Richard Cox, having applied for and secured an investment adviser certificate during the
25 period the conduct alleged herein took place, from as early as May 2000 through June 2009, was
26 obligated to have knowledge of and comply with the provisions of the CSL and regulations
27 promulgated thereunder.
28

1 83. Having been employed as a registered representative with NASD-member firms, Richard
2 Cox was required to pass qualifying examinations and to conform to the requirements of the CSL,
3 Federal securities law, rules and regulations promulgated by the United States Securities and
4 Exchange Commission and the NASD. Richard Cox took and passed the series 6 and series 73
5 examinations and was knowledgeable about the legal requirements governing those who are
6 employed in the securities industry. Richard Cox was also required by the NASD to requalify by
7 examination. As such, Richard Cox knew that either qualification or an exemption is required to
8 offer and sell securities in this state and that a license is required to engage in non-exempt broker-
9 dealer or investment adviser activities. Furthermore, Richard Cox continues to market his expertise
10 in providing "assistance in security registration" to clients.
11

12
13 84. Corporations Code section 25252, subdivision (b), authorizes the Commissioner to issue an
14 order levying administrative penalties against any broker-dealer or investment adviser for willful
15 violations of any provisions of the CSL and any rules promulgated thereunder.
16

17 85. Subdivision (b) of Corporations Code section 25252 provides, in relevant part:

18 The Commissioner may, after appropriate notice and opportunity for hearing, by
19 order levy administrative penalties as follows: . . .

20 (b) Any broker-dealer or investment adviser that willfully violates any
21 provision of this division to which it is subject, or that willfully violates any
22 rule or order adopted or issued pursuant to this division and to which it is
23 subject, is liable for administrative penalties of not more than five thousand
24 dollars (\$5,000) for the first violation, not more than ten thousand dollars
25 (\$10,000) for the second violation, and not more than fifteen thousand
26 dollars (\$15,000) for each subsequent violation....

27 WHEREFORE, good cause showing, and pursuant to subdivision (b) of Corporations Code
28 section 25252, the Commissioner prays for an order levying administrative penalties as follows:

a. Five thousand dollars (\$5,000) for the first violation of Corporations Code section
25110, ten thousand dollars (\$10,000) for the second violation of section 25110, and fifteen

1 thousand dollars (\$15,000) for each of the subsequent nineteen (19) violations of section 25110, as
2 set forth in paragraph 78 above, in the amount of three hundred thousand dollars (\$300,000);

3 b. Fifteen thousand dollars (\$15,000) for each of twenty-one (21) violations of
4 Corporations Code section 25401, as set forth in paragraph 78 above, in the amount of three
5 hundred and fifteen thousand dollars (\$315,000);
6

7 c. Fifteen thousand dollars (\$15,000) for violation of Corporations Code section
8 25241;

9 d. Fifteen thousand dollars (\$15,000) for violation of California Code of
10 Regulations, title 10, section 260.241.3;
11

12 e. Fifteen thousand dollars (\$15,000) for each of two (2) violations of Corporations
13 Code section 25404(b) in the sum of thirty thousand dollars (\$30,000), for making untrue
14 statements to the Commissioner in the course of the 2000 and 2003 examinations;

15 f. Fifteen thousand dollars (\$15,000) for violation of Corporations Code section
16 25235;
17

18 g. Fifteen thousand dollars (\$15,000) for violation of Corporations Code section
19 25210; and,

20 h. Fifteen thousand dollars (\$15,000) for violation of Corporations Code section
21 25230.
22

23 The total amount of administrative penalties levied pursuant to subdivision (b) of Corporations
24 Code section 25252 against Respondent Richard Albert Cox, individually and doing business as
25 Richard Cox Fiduciary Services, is seven hundred and twenty thousand dollars (\$720,000), or
26 according to proof.
27
28

X. CLAIM FOR ANCILLARY RELIEF
(AGAINST ALL RESPONDENTS)

86. Complainant re-alleges and reincorporates by reference paragraphs 1-85 of this Statement in Support as though fully set forth herein.

87. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief on behalf of any person injured by violations of any provision of the CSL and any rules promulgated thereunder.

88. Corporations Code section 25254 states:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

89. Based on the foregoing findings of fact, the Commissioner finds that Respondents sold unqualified, non-exempt securities in an amount of at least four hundred and ninety thousand dollars (\$490,000) to at least twenty-one (21) California investors, as set forth in paragraph 78 above, in violation of Corporations Code sections 25110 and 25401 by making misstatements or omissions of material fact in connection with the offer and sale of said securities.

WHEREFORE, good cause showing and the Commissioner's determination that this action is in the public interest and necessary to effectuate the Department's primary, legitimate,

1 regulatory purpose based upon the Respondents' violations of the CSL, the Commissioner hereby
2 prays for an order of ancillary relief pursuant to Corporation Code section 25254, individually,
3 jointly and severally, against Respondents as follows:

4
5 a. Full restitution, consisting of the investors' principal investment in Fiduciary
6 Investments, Inc. in an amount of at least four hundred and ninety thousand dollars (\$490,000.00),
7 or more according to proof, and interest at the legal rate, less credit to Respondents for sums
8 previously paid to investors;

9
10 b. Disgorgement of investment advisory or "investment management" fees paid to
11 Richard Albert Cox, individually and doing business as Richard Cox Fiduciary Services, during
12 the period he has been unlicensed, from June 24, 2009 to present, in an amount to be determined
13 according to proof, and including interest at the legal rate; and,

14
15 c. Recovery of reasonable attorney's fees, investigative expenses, and costs in an
16 amount of at least twenty-five thousand dollars (\$25,000.00), or according to proof.

17 **XI. DESIST AND REFRAIN ORDER**

18 **(AGAINST ALL RESPONDENTS)**

19 90. Complainant re-alleges and reincorporates by reference paragraphs 1-89 of this Statement
20 in Support as though fully set forth herein.

21
22 91. Corporations Code section 25532, in pertinent part, states:

23 (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification
24 under this law and it is being or has been offered or sold without first being qualified, the
25 commissioner may order the issuer or offeror of the security to desist and refrain from the
26 further offer or sale of the security until qualification has been made under this law or (2) the
27 sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and
the security is being or has been offered or sold without first meeting the requirements of
those sections, the commissioner may order the issuer or offeror of that security to desist and
refrain from the further offer or sale of the security until those requirements have been met.

28 ... (c) If, in the opinion of the commissioner, a person has violated or is violating Section
25401, the commissioner may order that person to desist and refrain from the violation.

1
2 92. Based upon the foregoing findings of fact, the Commissioner is of the opinion that the
3 securities in the form of shares of stock offered in Fiduciary Investments, Inc. are subject to
4 qualification and are being offered or have been offered or sold in this state without first being
5 qualified, in violation of section 25110 of the Corporate Securities Law of 1968.

6 93. The Commissioner is further of the opinion that the securities in the form of shares of stock
7 in Fiduciary Investments, Inc. were offered and sold in this state by means of written or oral
8 communications that included untrue statements of material fact or omitted to state material facts
9 necessary in order to make the statements made, in the light of the circumstances under which they
10 were made, not misleading, in violation of section 25401 of the Corporate Securities Law of 1968.

11
12 **IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:**

13
14 Pursuant to section 25532 of Corporate Securities Law of 1968, Respondents Fiduciary
15 Investments, Inc., Richard Albert Cox, individually and doing business as Richard Cox Fiduciary
16 Services, and Barbara Bailey Cox are hereby ordered to desist and refrain from the further offer or
17 sale in the State of California of securities, including but not limited to shares or stock, unless and
18 until qualification has been made under said law or unless exempt.

19
20 And, pursuant to section 25532 of the Corporate Securities Law of 1968, Respondents
21 Fiduciary Investments, Inc., Richard Albert Cox, individually and doing business as Richard Cox
22 Fiduciary Services, and Barbara Bailey Cox are hereby ordered to desist and refrain from offering or
23 selling any security in the State of California, including but not limited to shares or stock, by means
24 of any written or oral communication which includes an untrue statement of a material fact or omits
25 to state a material fact necessary in order to make the statements made, in the light of the
26 circumstances under which they were made, not misleading.
27
28

1 This Order is necessary, in the public interest, for the protection of investors and consistent
2 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

3 **XI. DESIST AND REFRAIN ORDER**
4
5 **(AGAINST RESPONDENT RICHARD COX)**

6 94. Complainant re-alleges and reincorporates by reference paragraphs 1-93 of this Statement
7 in Support as though fully set forth herein.

8 95. Corporations Code section 25532, in pertinent part, states:

9 (b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or
10 investment adviser, or has been or is engaging in broker-dealer or investment adviser
11 activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that
12 person to desist and refrain from the activity until the person has been appropriately licensed
or the required filing has been made under this law.

13 96. Based on the foregoing, the Commissioner is of the opinion that Richard Albert Cox,
14 individually and doing business as Richard Cox Fiduciary Services, is subject to the laws regulating
15 broker-dealers and investment advisers under the Corporate Securities Law of 1968 and, working
16 alone or in concert or participation with others, has effected transactions in securities as a broker-
17 dealer, or induced or attempted to induce the purchase or sale of any security, in this state, and has
18 engaged in investment adviser activities without having first applied for and secured from the
19 Commissioner a certificate, then in effect, authorizing him to act in such capacity, in violation of
20 sections 25210 and 25230 of the Corporate Securities Law of 1968.

21
22 **IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:**

23 Pursuant to section 25532 of the Corporate Securities Law of 1968, Richard Albert Cox,
24 individually and doing business as Richard Cox Fiduciary Services, is hereby ordered to desist and
25 refrain from effecting any transaction in securities as a broker-dealer, or inducing or attempting to
26 induce the purchase or sale of any security, in this state, and/or engaging in investment adviser
27 activities unless and until certification has been made under said laws or unless exempt.
28

1 This Order is necessary, in the public interest, for the protection of investors and consistent
2 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

3 **XII. PRAYER**

4 **(AGAINST RESPONDENTS FIDUCIARY INVESTMENTS AND BARBARA COX)**

5 WHEREFORE, good cause showing, pursuant to subdivision (a) of Corporations Code
6 section 25252, the California Corporations Commissioner prays for an Order Levying
7 Administrative Penalties against Respondents Fiduciary Investments, Inc. and Barbara Bailey Cox,
8 individually, jointly and severally, as follows:
9

10 Administrative penalties for violations of California Corporations Code sections 25110 and
11 25401 in the total amount of \$103,500, or according to proof.
12

13 **(AGAINST RESPONDENT RICHARD COX)**

14 WHEREFORE, good cause showing, pursuant to subdivision (b) of Corporations Code
15 section 25252, the California Corporations Commissioner prays for an Order Levying
16 Administrative Penalties against Respondent, Richard Albert Cox, individually and doing business
17 as Richard Cox Fiduciary Services, as follows:
18

19 Administrative penalties for violations of California Corporations Code sections 25110,
20 25401, 25241, 25404(b), 25235, 25210 and 25230 and California Code of Regulations, title
21 10, section 260.241.3, in the total amount of \$720,000, or according to proof.
22

23 WHEREFORE, good cause showing, pursuant to Corporations Code section 25254, the
24 Commissioner hereby prays for an order of ancillary relief against Respondent Richard Albert
25 Cox, individually and doing business as Richard Cox Fiduciary Services, consisting of:
26

27 Disgorgement of investment advisory or "investment management" fees paid to Richard
28 Albert Cox, individually and doing business as Richard Cox Fiduciary Services, during

1 the period he has been unlicensed, from June 24, 2009 to present, in an amount to be
2 determined according to proof, and including interest at the legal rate.

3 **(AGAINST ALL RESPONDENTS)**

4
5 WHEREFORE, good cause showing, pursuant to Corporations Code section 25254, the
6 Commissioner hereby prays for an order of ancillary relief against Respondents Fiduciary
7 Investments, Inc., Richard Albert Cox, individually and doing business as Richard Cox
8 Fiduciary Services, and Barbara Bailey Cox, individually, jointly and severally, consisting of:

9 (1) Full restitution to investors consisting of their investment principal in the amount
10 of at least \$490,000, or more according to proof, and interest at the legal rate, less credit
11 to Respondents for sums previously paid to investors; and,
12

13 (2) Recovery of reasonable attorney's fees, investigative expenses, and costs in an amount
14 of at least twenty-five thousand dollars (\$25,000.00), or according to proof.
15

16
17 Dated: September 28, 2011
18 Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

19 By: _____
20 ALAN S. WEINGER
21 Deputy Commissioner
22
23
24
25
26
27
28